

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

3:88-CR-00136

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	ORDER
)	
v.)	
)	
DONALD LAMONT POSTELL,)	
)	
Defendant)	
)	

UPON Motion of the Defendant Donald Lamont Postell (Doc. No. 2, August 7, 2008), on remand from the United States Court of Appeals for the Fourth Circuit,¹ and pursuant to Fed. R. Crim. P. 36 ("Rule 36"), the Court HEREBY ORDERS the Amendment of the original Judgment in this case issued on February 17, 1989, by the Honorable Robert D. Potter.

In preparing the original Judgment, the Defendant's surname was misspelled – "Postel" rather than the correct spelling of "Postell." The indictment and all other court documents properly spell the Defendant's surname.

Under Rule 26, after appropriate notice a court "may *at any time* correct a clerical error in a judgment . . ." (Emphasis added). Because Defendant Postell was sentenced in 1989 but did not raise this typographical error until nineteen years later in 2008 after he had filed two 28 U.S.C. § 2255 motions, this Court erroneously dismissed this Motion as a successive section § 2255 motion. Instead the Court should have considered Defendant's motion under Rule 36, which neither has a time bar nor a limit on the number successive filings.

THEREFORE, the caption in the original Judgment issued on February 17, 1989, is hereby

¹United States v. Postell, slip op. 10-6943 (4th Cir. Feb. 22, 2011)

amended from:

UNITED STATES OF AMERICA V. DONALD LAMONT POSTEL

to:

UNITED STATES OF AMERICA V. DONALD LAMONT POSTELL

All other terms, conditions, findings, holdings, writings, and spellings in the original Judgment of February 17, 1989, remain the same and remain in full force and effect.

FURTHERMORE, this ORDER IS DEEMED A PERMANENT SUPPLEMENT to the original Judgment of February 17, 1989. All government agencies (*e.g.*, Clerk of Court, United States Marshals Service, United States Bureau of Prisons, *etc.*) which must maintain a copy of the original Judgment in their files should attach and maintain a copy of this Supplement with the agency's copy of the original Judgment.

THE CLERK OF COURT IS ORDERED to certify a copy of this Order to the Defendant at his last known place of incarceration, the United States Marshals Service, and the United States Bureau of Prisons.

IT IS SO ORDERED.

Signed: February 23, 2011



Frank D. Whitney
United States District Judge
